

The Honorable James L. Robart

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

CROSSFIT, INC., ) No. 2:11-cv-01061-JLR  
vs. )  
Plaintiff, ) ANSWER AND AFFIRMATIVE  
vs. ) DEFENSES  
TAL MOORE and JANE DOE MOORE, )  
Defendant, )

COMES NOW Defendant, TAL MOORE, through his attorney, THOMAS J. WESTBROOK, and in answer to Plaintiff's Complaint, admits, denies, and alleges as follows:

## I. PARTIES

1. Defendant is without information sufficient to have any knowledge or form any belief as to the truth or accuracy of the allegation of Plaintiff in paragraph 1 of the Complaint and therefore denies that allegation.
2. Defendant admits he is a resident of Seattle and denies all else.

1                   **II. JURISDICTION AND VENUE**

2     3. Defendant admits the allegations of paragraph 3.  
3     4. Defendant admits that he resides and transacts business within the State of  
4     Washington and this District; denies all other allegations of paragraph 4.  
5     5. Defendant admits the allegations of paragraph 5.

6                   **III. FACTS**

7     6. Defendant is without information sufficient to form a belief as to the truth of the  
8     allegations of paragraph 6 and therefore deny the same.

9     7. Defendant is without information sufficient to form a belief as to the truth of the  
10    allegations of paragraph 7 and therefore deny the same.

11    8. Defendant is without information sufficient to form a belief as to the truth of the  
12    allegations of paragraph 8 and therefore deny the same.

13    9. Defendant is without information sufficient to form a belief as to the truth of the  
14    allegations of paragraph 9 and therefore deny the same.

15    10. Defendant is without information sufficient to form a belief as to the truth of the  
16    allegations of paragraph 9 and therefore deny the same.

17    11. Defendant admits he is the founder of Gumballs.com.

18    12. Defendant denies he is a cyber squatter.

19    13. Defendant admits that he registered the domains listed in Exhibit A; deny all else.

20    14. Defendant admits the allegation in paragraph 14.

21    15. Defendant is without information sufficient to form a belief as to the truth of the  
22    allegations of paragraph 15 and therefore deny the same.

23    16. Defendant admits that he sold some domains that included "crossfit" within the  
24    domain name; denies all else.

25    17. Defendant admits that he registered the domains listed in Exhibit A though the  
26    GoDaddy.com, Inc., domain name registrar; deny all else.

1       18. Defendant denies knowledge of the CrossFit trademark when he registered the  
2 domains listed in Exhibit A. Defendant admits the remaining allegations in paragraph  
3 19. Defendant admits the allegations in paragraph 19.  
4 20. Defendant admits the allegations in paragraph 20.  
5 21. Defendant admits the allegations in paragraph 21.  
6 22. Defendant admits to having been contacted by affiliates of CrossFit using one of  
7 the webforms depicted.  
8 23. Defendant is without information sufficient to form a belief as to the truth of the  
9 allegations of paragraph 23 and therefore deny the same.  
10 24. Defendant admits having received a letter from CrossFit objecting to the  
11 registration of the domains in question and offering to reimburse him for his pro rated  
12 out-of-pocket costs in exchange for transferring or cancelling all of the domains in  
13 question and that they would take legal action if he did not comply with the request;  
14 Defendant asserts and avers that he attempted to cancel his registration of all domains  
15 in question by allowing them to expire and Plaintiff has taken action to frustrate  
16 Defendant's attempt to cancel the registrations by requesting the domain registrar to  
17 place a hold on the cancellation. Plaintiffs have never reimbursed Defendant for  
18 cancelling the domains as they requested.  
19 25. Defendant admits that he did not take Plaintiff up on its offer and instead took  
20 action to cancel the domains by allowing them to expire.

21                   **VI. CAUSE OF ACTION: Violation of 15 U.S.C. § 1125(D)**

22 26. Defendant re-alleges and incorporates its answers in paragraphs 1 to 25 above.  
23 27. Defendant denies the allegations in paragraph 27.  
24 28. Defendant admits the allegations in paragraph 28.  
25 29. Defendant admits the allegations in paragraph 29.  
26 30. Defendant admits the allegations in paragraph 30.  
27

1 31. Defendant does not understand the allegation in paragraph 31 and therefore  
2 denies the same.  
3 32. Defendant denies the allegations in paragraph 32.  
4 33. Defendant admits to having sold and offered to sell the domain names in Exhibit A;  
5 deny all else.  
6 34. Defendant admits that he keeps his domain registrations as private; denies all other  
7 allegations of paragraph 34.  
8 35. Defendant denies the allegations in paragraph 35.  
9 36. Defendant denies the allegations in paragraph 36.  
10 37. Defendant denies the allegations in paragraph 37.  
11 38. Defendant denies the allegations in paragraph 38, including all legal conclusions.  
12 Defendant alleges and avers that injunctive relief is unwarranted and inappropriate as  
13 he has cancelled his registration of the domains in question as requested by Plaintiff by  
14 allowing the domains to expire. Defendant is free to purchase the domains from any  
15 domain registrar they desire.  
16 39. Defendant denies the allegations in paragraph 39 and specifically alleges and  
17 avers that there was no need for Plaintiff to bring this litigation as Defendant had  
18 allowed the domain registrations to expire; it is Plaintiff that is holding up the  
19 cancellation of the domains by its own actions.

20 **VII. AFFIRMATIVE DEFENSES**

21 HAVING ANSWERED Plaintiff's Complaint, Defendant now asserts the following  
22 Affirmative Defenses:

23 1. Defendant realleges the preceding paragraphs of this pleading.  
24 2. Failure to state a claim [CR 12(b)(6)]. Plaintiff has failed to state a claim upon which  
25 relief may be granted.  
26 3. Waiver, laches and estoppel. Plaintiff's claims are barred in whole or in part by the  
27 doctrines of waiver, laches and estoppel.

1     4. Defendant reserves the right to amend, supplement or withdraw any of the above  
2 affirmative defenses or to add additional affirmative defenses as additional information  
3 becomes available as the result of discovery.

## **VIII. RELIEF REQUESTED**

5 WHEREFORE, Defendant having answered Plaintiff's Complaint and having  
6 asserted its Affirmative Defenses, now pray the Court:

7     1. To dismiss Plaintiff's Complaint with prejudice and without costs to Defendant;

8     2. To deny Plaintiff's request for injunctive relief as Defendant has allowed the domain

9     registrations to expire and it is the action of Plaintiff that is keeping the domains from

10    being cancelled and registered in its name.

11    3. Order Plaintiff to take such action as necessary to remove the hold they have

12    placed on the domain registration cancellation efforts of Defendant.

13    4. To award Defendants their reasonable attorney's fees and costs to defend this

14    action and for such other and further relief as the Court deems just and equitable.

15    5. To amend the pleadings to conform to the evidence at the conclusion of the trial;

17 | DATED: July 28, 2011.

LAW OFFICE OF  
THOMAS J. WESTBROOK, PLLC.

By: \_\_\_\_\_ /s/  
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## **Certificate of service**

I hereby certify that on July 28, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

**Michael G. Atkins**  
Graham & Dunn PC  
Pier 70, Alaskan Way, Suite 300  
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